



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Ms. Elaine L. Fannin  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR94-852

Dear Ms. Fannin:

The Texas Department of Agriculture (the "department") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The department's request was assigned ID# 30191.

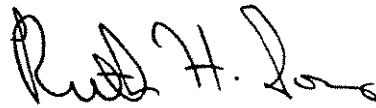
The department received a request for information about alleged violations of the state's pesticide application laws. The department contends that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated in a judicial or quasi-judicial proceeding and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. This office was provided information that shows litigation is reasonably anticipated. The department also supplied to this office for review the requested information. The requested information is related to the anticipated litigation. The department has therefore met its burden of showing that the requested information relates to pending litigation for purposes of section 552.103(a).

We note, however, that some of the information submitted to this office appears to have already been disclosed to the opposing party in the anticipated litigation. We have marked this information to indicate that it should be released. Absent special circumstances, once all parties to the anticipated litigation have had access to the information at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). The information at issue that has not previously been disclosed may be withheld from disclosure under section 552.103(a).

The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy".

Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 30191

Enclosures: Submitted documents

cc: Ms. Jan Bryant  
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(w/o enclosures)